IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

RAM KISHORE VERSUS STATE OF RAJASTHAN

S.B.CRI. APPEAL NO.286/2007

AGAINST THE JUDGMENT DATED 27.2.2007 IN MISCELLANEOUS CASE NO.11/2007 PASSED BY SHRI R.K.BANSAL R.H.J.S. SPECIAL JUDGE PREVENTION OF CORRUPTION ACT CASES COURT- CASES COURT, JODHPUR WHEREBY HE FORFEITED BAIL BONDS AND IMPOSED PENALTY OF RS.2000/- FOR BEING ABSENCE ON 10.1.2007 ON WHICH JUDGMENT/ORDER OF CRIMINAL CASE NO.10/2001 WAS PRONOUNCED.

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Date of Judgment:- 2.5.2007

PRESENT
HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr.S.P sHARMA ,counsel for the appellant.
Mr.J.P.S. Choudhary, Public Prosecutor.

BY THE COURT -

This appeal is directed against the judgment and order dated 27.2.2007 passed by the learned Special Judge, Prevention of Corruption Cases – Court, Jodhpur, in Miscellaneous case No.11/2007 whereby he forfeited the bail

bonds of the appellant and imposed penalty of Rs.2000/- for being absence on 10.1.2007 on which date judgment and order of the criminal Case No.10/2001 was pronounced.

2. Prosecution case is that as under :

On 25.1.2007 accused appellant Ram Kishore surrender before the aforesaid Court and notice of proceedings under Section 446 Cr.P.C. was taken by him and sought time for filing reply.

In reply to notice under Section446 Cr.P.C. proceeding, appellant stated that he suddenly became ill therefore, he was tekn to Govt. Hospital Paota,Jodhpur and on next day he went to SMS Hospital, Jaipur for treatment. It is also submitted that on 10.1.2007 there was strike of Advocates therefore, his Advocate has not put in appearance before the Court and his Advocate has also filed an application for exemption of appearance of the appellant on that day and during the course of hearing he has submitted medical precrition slips of Govt Hospital Paota, Jodhpur and SMS.Hospital Jaipur.

Undisputedly it is true that Ram Kishore appellant was not present on 10.1.2007 and he has produced medical certificates to this effect that he was treated in Govt Hospital Paota,Jodhpur and then on next day at SMS Hospital,Jaipur which shows his seriousness or sudden illness. By the judgment and order dated 10.1.2007 he was convicted and sentenced and

he was not present and after gathering information,he filed appeal along with application for suspension and get the order of suspending the sentence.

Learned Court below has forfeited the bail bonds and from bond of Rs.10,000/- amount of Rs.2000/- was to be recovered as penalty and also issued notice to sureties. Hence, this appeal.

Heard learned counsel for the appellant and learned Public Prosecutor and perused the record of the case.

Learned counsel for the appellant stated that the learned trial Court specifically observed that on 10.1.07 the appellant was not able to attend the Court because of illness on that day and he also produced evidence for Paota Dispensary and SMS Hospital,Jaipur for the second day and there was strike of Advocates in Jodhpur so looking to un-ability to appear before the Court and apply for exemption, there were sufficient casue for absence in spite of that learned trial Court rejected the application whereas it was desirable that either the judgment should be postponed or personal attendance should be exempted. Thus, the order of the trial Court deserves to be set aside including the show cause notice issued to the sureties. Learned counsel for the appellant also stated that even the amount of Rs.2000/- is also forfeited is excessive and it is not

warranted so order should b quashed. Learned counsel for the appellant relied on decisions of this Court in case of Ramesh vs State of Rajasthan S.B.Cr. Appeal No.229/98 decided on 3.4.1998 and 2000(1)WLN 321 Makhra Ram vs State of Rajasthan.

On going through the above arguments it is clear that the learned trial Court has justified the impugned order by subsequent conduct of the appellant for getting bail etc from the Hon'ble High Court and not remain in custody for the conviction whereas it was desirable that reasons stated by the appellant are reasonable or not, and it is expected that from all point of view substantial justice should be done by the Court and the matter should not be disposed of for sake of the disposal as provisions of Section 446(3) Cr.P.C. are clear for the leniency in such matters. The Court should consider whether it was a case of wilful non-appearance before ordering forfeiture of the surety bond. The Court must find that the terms of the bond have been violated, so that bond may be taken to have been forfeited. The grounds for such finding must be also be recorded. No doubt that as surety who undertakes to produce the accused on all hearings of the trial or till disposal of the case, exposes himself to the penalty of forfeiture for non-appearance of the accused before visiting him with such a penalty, the surety must afforded an opportunity of hearing. In

such matters a rigid adherence or haste in ordering forfeiture is not called for. What the Court has to see is if there was any good or sufficient cause for non-appearance of the accused or non-production of the accused by the surety on a given date.

In view of the above discussions, the appeal is allowed and the impugned judgment and order dated 27.2.2007 passed in Cr.Misc. Case No.11/2007 passed by the Special Judge, Prevention of Corruption Cases- Court, Jodhpur for forfeiting Rs.2000/- and issuance of notice to the sureties is set aside.

(CHATRA RAM JAT),J.

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